



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9**

**75 Hawthorne Street (CED-6)
San Francisco, CA 94105**

October 16, 2009

Via Email and Mail

Antonio S. Muna
Executive Director
Commonwealth Utilities Corporation
P.O. Box 501220 CK
Saipan, MP 96950

Re: Stipulated Order Numbers One and Two for Preliminary Injunctive Relief (Civil Case No. CV 08-0051) dated March 11, 2009.

Dear Mr. Muna:

On September 30, 2009 (PDT), representatives of the Commonwealth Utility Corporation ("CUC") and the U.S. Environmental Protection Agency conferred in person and by telephone on the status of CUC's compliance with a number of the requirements in the above-reference Stipulated Orders (SOs). As we made clear, the United States is seriously concerned with CUC's lack of compliance with many important provisions in both SOs. CUC's difficulty in achieving compliance during the first six months after entry of the Orders is especially troubling. Although we explored possible options for moving forward, the United States believes strict adherence to the deadlines and requirements of the Orders is necessary to protect public health and the environment and to ensure CUC's expeditious compliance with the Clean Water Act and Safe Drinking Water Act requirements.

Our most urgent concern is for CUC to secure its oil spills, oil containers and spill response capabilities immediately before another typhoon threatens the company's facilities and operations. Fortunately, the two typhoon threats in the last few weeks did not materialize into serious storms, but these events highlight the very serious threats of release to the environment that currently exist at the CUC facilities. As required under SO2 and outlined below, CUC must implement all actions necessary to prevent, abate or minimize the discharge or threat of discharge of oil or hazardous substances from its facilities. The United States has used federal resources in conducting emergency measures to help minimize such threats during the current typhoon season. The United States will seek cost recovery from CUC for these measures and will seek to do so for additional federal resources utilized to mitigate releases or threats of release from the CUC facilities.

As discussed during the September 30, 2009 conference, the United States confirms CUC's non-compliance with the following provisions in the Stipulated Orders. We will address CUC's non-compliance with any other provisions in separate correspondence.

Stipulated Order One:

Paragraph 9: CUC has not yet officially hired the full-time Deputy Executive Director as required under Paragraph 9. For the time being, CUC's Deputy Director of Water and Wastewater Operations, Bruce Megarr, will continue to sign, certify and send to the U.S. Environmental Protection Agency (EPA), all of CUC's submissions under Stipulated Order One. As stated in our September 15, 2009 correspondence, stipulated penalties for non-compliance with Paragraph 9 began to accrue as of July 19, 2009 (the deadline for the revised Paragraph 9 submission). As of October 16, 2009, those penalties have amounted to \$240,000.

Paragraph 10: CUC has not yet hired a full-time Drinking Water and Wastewater Division Manager as required under Paragraph 10. Stipulated penalties began to accrue as of September 8, 2009 and as of October 16, 2009 have amounted to \$48,000.

Paragraph 14: CUC has not yet hired a full-time Chief Financial Officer (CFO) as required under Paragraph 14. CUC indicated it anticipated beginning to advertise for that position in approximately 90 days. It is not clear why CUC has delayed and continues to delay soliciting candidates for this position. Stipulated penalties began to accrue as of September 8, 2009 and as of October 16, 2009 have amounted to \$48,000.

Paragraph 16: CUC has not yet submitted the Organizational Evaluation and Reorganization Plan required under Paragraph 16. CUC indicated it has completed the Water and Wastewater Operations portion of this Plan, but still needs to complete the remaining portions of the Plan. You did not have an estimated time for submitting the complete Plan. As stated in our September 25, 2009 correspondence, stipulated penalties began to accrue as of September 25, 2009 and as of October 16, 2009 have amounted to \$22,000.

Paragraph 32: CUC has not submitted a complete report on its drinking water meter reading program and documentation that it has commenced billing all existing metered customers based on consumption as required under Paragraph 32. CUC staff provided EPA with partial information on its meter reading program on July 18, 2009 and portions of a draft report on September 20, 2009. The draft submission did not confirm that as of September 7, 2009, CUC is billing all existing metered customers based on consumption. CUC's submission for 32.b does not need to include rate structure information provided it is covered as part of CUC's Interim Financial Plan. As stated in our September 15, 2009 correspondence, stipulated penalties began to accrue as of September 8, 2009 and as of October 16, 2009 have amounted to \$24,000.

Paragraph 48: CUC has not yet submitted the complete Interim Financial Plan required under Paragraph 48. You indicated you were still working on the IFP and had obtained some input on it from the consultant of the Commonwealth Public Utilities Commission (CPUC), Georgetown Consulting. On September 26, 2009, CUC emailed a partial IFP submission to EPA, without a cover letter. During the September 30, 2009 call, we reiterated our request that CUC provide a

cover letter with each submission, confirming that it is the company's official submission and that copies have been sent to all the designated parties. On October 1, 2009, CUC hand-delivered the partial submittal with a cover letter to EPA. The partial submittal does not satisfy the requirements of paragraph 48 and provides no date for when CUC will submit the complete IFP. As stated in our September 25, 2009 correspondence, stipulated penalties began to accrue on September 25, 2009 and as of October 16, 2009 have amounted to \$22,000.

Altogether, the stipulated penalties that have accrued through October 9, 2009 under the above provisions of Stipulated Order Number One are \$404,000.

Stipulated Order Number Two:

Paragraph 12: CUC did not report an oil spill which caused or may have caused a substantial threat of a discharge from the Power Plant. CUC is required to immediately notify the On-Scene Coordinator of the incident. The spill occurred on or around September 13, 2009, and the On-Scene Coordinator was notified by the U.S. Coast Guard, but not CUC, of the incident on September 15, 2009. CUC then notified EPA that it did not believe it was a discharge and did not believe it needed to notify EPA, which was incorrect. EPA does not consider this to be proper notification pursuant to the Stipulated Order Number Two. Since the On-Scene Coordinator was notified of the event on September 15, 2009, stipulated penalties ran for 1 day in the amount of \$1,000.

Paragraph 22: CUC did not place each drum or other container used for the storage of oil into Secondary Containment by September 7, 2009. "Secondary Containment" means the geographic area located beneath and surrounding any tank or other container which is used for the storage of oil, which provides capacity for the largest container located within the area plus adequate freeboard for precipitation. Secondary Containment prevents a spill of oil from emanating beyond this geographic area and must be impervious to spilled oil. Many of the drums and tanks are not placed in adequate secondary containment. Therefore, stipulated penalties began accruing on September 8, 2009 and are continuing to accrue. As of October 16, 2009, stipulated penalties have accrued in the amount of \$48,000.

Paragraph 43: CUC submitted a Facility Response Plan ("FRP") on July 9, 2009. EPA disapproved the FRP on September 17, 2009 and provided CUC with a 20 day period to correct the FRP, therefore, the revised FRP was due on October 6, 2009. EPA has not received the revised FRP and stipulated penalties began to accrue on October 7, 2009. As of October 16, 2009, stipulated penalties have accrued in the amount of \$10,000.

Paragraph 55: CUC submitted a Quarterly Report that referenced a pipe inspection report which was not attached to the quarterly report. EPA requested a copy of the pipe inspection report within 30 days or by August 19, 2009. The pipe inspection report was submitted on September 8, 2009 and stipulated penalties accrued from August 20, 2009 to September 8, 2009 in the amount of \$20,000. Additionally, on September 7, 2009, EPA requested clarification and information on CUC's oil sampling protocol by October 6, 2009. CUC has not provided the information and stipulated penalties started to accrue on October 7, 2009. As of October 16, 2009, stipulated penalties have accrued in the amount of \$10,000.

Paragraph 60b: CUC submitted a Health and Safety Plan (“HASP”) on May 10, 2009. EPA reviewed the HASP and provided comments. A revised HASP was due on October 6, 2009. EPA received the revised Health and Safety Plan on October 13, 2009. Stipulated penalties began to accrue on October 7, 2009. Therefore, stipulated penalties accrued in the amount of \$6,000.

Paragraph 20a: CUC has not provided EPA the opportunity to review and comment on contractors and requests for proposals for work as required in Paragraph 20. Pursuant to Paragraph 20a, CUC is required to notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by CUC who will conduct all or any portion of the work no less than ten (10) working days prior to the commencement of the work to be performed by such persons. EPA has not provided approval for the tank repair contractor provided in Submission #10, and EPA notified CUC on September 7, 2009 that it had 30 days (to October 6, 2009) to provide the appropriate qualifications. Therefore, stipulated penalties began accruing on October 7, 2009. As of October 16, 2009, stipulated penalties have accrued in the amount of \$10,000.

Paragraph 20b: CUC has not provided EPA with the requests for proposals (“RFPs”) prior to their issuance pursuant to paragraph 20b. CUC published its HASP and Work Plan RFP on April 23, 2009 and submitted the RFP to EPA on April 24, 2009, but RFPs are required to be submitted to EPA 15 days in advance of publication. Therefore, stipulated penalties accrued from April 9, 2009 to April 23, 2009 in the amount of \$15,000. Regarding CUC’s Transfer of Used Oil RFP, EPA does not have information about when it was published by CUC, although a requisition voucher was signed by CUC on April 8, 2009. It was submitted to EPA on April 27, 2009. Therefore, stipulated penalties accrued beginning on March 25 and continued to accrue to April 26, 2009 in the amount of \$36,000. Regarding CUC’s Diesel and HFO tank repair RFP, EPA does not have information about when it was published by CUC, but EPA has a quote from vendor dated April 1, 2009. This RFP was submitted to EPA on May 5, 2009, therefore, penalties accrued from at least March 18, 2009 to May 4, 2009 in the amount of \$66,000. Regarding the tank repair contractor RFP which was submitted to EPA on May 27, 2009, EPA does not know when the RFP was published by CUC, but the requisition voucher was signed by CUC on May 13, 2009. Therefore, stipulated penalties accrued from at least April 29, 2009 to May 26, 2009 in the amount of \$28,000.

Altogether, the stipulated penalties that have accrued through October 16, 2009, under the above provisions of Stipulated Order Number Two total approximately \$230,000.

The Stipulated Orders were extensively and carefully negotiated between the parties and judicially approved in March 2009. CUC’s noncompliance with the Orders during the first six months after the entry date has been alarming. CUC must immediately fulfill its obligations under the Stipulated Orders in a complete and timely manner. Stipulated penalties are accruing for the above violations. While this letter is not a demand for payment of these stipulated penalties, EPA is currently evaluating our next steps for enforcement of the Orders.

If you have any questions, please contact Michael Lee at (415) 972-3769 and Michelle Rogow at (415) 972-3082.

Sincerely,



Michael Lee
EPA Project Coordinator



Michelle Rogow
On-Scene Coordinator

cc: A. Malae, CUC
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